

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 18 1999

CREDIT & DEBIT MANAGEMENT  
CENTER, OMD

OFFICE OF  
MANAGING DIRECTOR

DOCKET FILE COPY ORIGINAL 91-285

Timothy K. Brady, Esq.  
P.O. Box 986  
Brentwood, TN 37024-0986

RE: Request for Refund of Application Fee  
B.R. and Martha S. Clayton, d.b.a. Middleton Radio  
File No. BPH-970109MA  
Fee Control No. 9701108195067002


Dear Mr. Brady:

This is in response to the request for refund of the application fee for a new FM radio station, filed on behalf of B.R. and Martha S. Clayton, d.b.a. Middleton Radio. You request that we waive and refund the filing fee paid by the Claytons under the refund provisions of the *First Report and Order in the Matter of Implementation of Section 309(j) of the Communications Act*, 13 FCC Rcd. 15920 (1998) (*First Report and Order*).

In the *First Report and Order*, the Commission determined that it would refund filing fees when applications for new stations were submitted prior to July 1, 1997, and are dismissed on pleadings disavowing interest in participating in the subsequently announced competitive bidding process. *Id.*, at 15,957. You argue that the Claytons filed their application before July 1, 1997, and elected not to participate in the competitive bidding process. The Claytons' application, however, was dismissed with prejudice pursuant to the terms of a negotiated settlement agreement. Their situation does not fall within the parameters established by the Commission for the refund of fees with respect to such applications. Therefore, your request is denied.

If you have any questions concerning this letter, please call the Credit & Debt Management Center at 418-1995.

Sincerely,

  
Mark Reger  
Chief Financial Officer

9701108195067002

RECEIVED

DEC - 4 1998

Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC MAIL ROOM

In re

B. R. Clayton and Martha S. Clayton )  
d/b/a Middleton Radio )

File No. BPH-970109MA

To: The Managing Director

REQUEST FOR REFUND OF FILING FEE

B. R. Clayton and Martha S. Clayton d/b/a Middleton Radio, former applicant (File No. BPH-970109MA) for a new FM station to operate on Channel 264C3 at Middleton, Tennessee, by counsel herewith submit their request for refund of the filing fee, which they paid at the time the above referenced application was filed with the Commission. In support whereof the following is shown:

1. In its First Report and Order (FCC 98-194) in MM Docket No. 97-234, 63 Fed. Reg. 48615 (September 11, 1998) the Commission determined (at paragraphs 101-103) that it would refund the filing fees paid by applicants who: (a) were subject to the provisions of 47 USC 309(l) and (b) elected not to have the disposition of their applications determined by competitive bidding.

2. Mr. and Mrs. Clayton filed their application for construction permit on January 9, 1997. At the time of filing they submitted the required filing fee in the amount of \$ 2,470.00 (See Exhibit A, hereto). Competing applications were

filed, specifying the same facilities. As of July 1, 1997, the above referenced application was mutually exclusive with these other applications and remained pending. Accordingly, B. R. Clayton and Martha S. Clayton d/b/a Middleton Radio was an applicant subject to the provisions of 47 USC 309(1), which provided for special treatment of mutually exclusive applicants who filed their applications prior to July 1, 1997.

3. Mr. and Mrs. Clayton have elected and previously advised the Commission of their election not to have the disposition of their application resolved by competitive bidding. In that regard, Mr. and Mrs. Clayton requested dismissal of their application with prejudice, pursuant to the terms of a settlement agreement, which was filed with an accompanying joint request on January 30, 1998. On September 21, 1998, the Commission granted the joint request for approval of settlement and dismissed the above referenced application with prejudice. See: Public Notice Report No. 44333, Broadcast Actions, released September 24, 1998.

4. Accordingly, in light of their status as a pre-July, 1997 applicant, entitled to treatment under the the provisions of 47 USC 309(1), and their election not to have the disposition of their application determined by competitive bidding, B. R. Clayton and Martha S. Clayton d/b/a Middleton Radio are entitled to refund of the filing fee they previously paid, pursuant to the provisions of the Commission's First Report and Order (FCC 98-194). Therefore, it is requested that a check payable to "B. R. Clayton and Martha S. Clayton d/b/a Middleton Radio" in the

amount of \$ 2,470.00 be forwarded promptly to their undersigned  
counsel at the address listed below.

Respectfully submitted,

B. R. Clayton and Martha S. Clayton  
d/b/a Middleton Radio

By: 

Timothy K. Brady  
Their Attorney

P.O. Box 986  
Brentwood, TN 37024-0986  
615-371-9367

December 2, 1998

# Payment Transactions Detail Report

Date: 3/9/99

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Fcc Account Number	Payer TIN	Received Date							
9701108195067002	CLAYTON, B R PO BOX 142	FCC2033522		01/09/97							
	WALNUT	MS	38683								
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$2,470.00	\$2,470.00	1	MTR	1		CLAYTON, B R:CLAYTON, MARTHA S	38683		\$2,470.00	1	PMT
Total	1								\$2,470.00		

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

October 26, 1999

OFFICE OF  
MANAGING DIRECTOR

86285  
DOCKET FILE COPY ORIGINAL

Ms. Lucyna Migala  
Vice President and Program Director  
Migala Communications, Inc.  
5356 West Belmont Avenue  
Chicago, Illinois 60641-4192

RE: Request for Refund and Reduction of  
Regulatory Fees  
WCEV 1450 AM  
Migala Communications, Inc.  
Fee Control No. 9810018835111001  
Fee Paid \$1,500

Dear Ms. Migala:

This is in response to the request for partial reduction and refund of the Fiscal Year (FY) 1997 and FY 1998 regulatory fees filed on behalf of Migala Communications, Inc., licensee of Radio Station WCEV, Cicero, Illinois. We apologize for failing to respond to your request in a timely manner.

You request that we reduce the regulatory fee for FY 1997 and grant Migala Communications, Inc. a partial refund of the fee. Your request as to the regulatory fee for FY 1997 is untimely. The Commission will accept petitions for waiver, reduction and deferment of regulatory fees so long as they are filed no later than the date the corresponding fee is due. *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5345 (1994). There is no Commission record of a timely request for refund and reduction by you for the FY 1997 fee. Therefore, your request as for partial reduction and refund of the regulatory fee for FY 1997 is denied.

You also request that we reduce the regulatory fee for FY 1998 and grant Migala Communications, Inc. a partial refund of the fee. You first argue that the regulatory fee should be reduced because WCEV shares the frequency with Radio Station WVON and utilizes the frequency only half the broadcast day. The Commission does not distinguish between broadcast stations on the basis of whether they share frequencies for purposes of regulatory fees. *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12764 (1995). Therefore, your request for a reduction of the FY 1998 regulatory fee based on shared use of frequency is denied.

In ruling on waiver requests, however, the Commission will consider the effect that shared use may have on reducing a station's market size or creating financial hardship for a station. Therefore, you may refile a request for partial reduction of the FY 1998 regulatory fee within 30 days from the date of this letter, if you can provide appropriate

Ms. Lucyna Migala

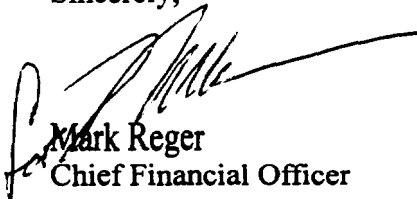
2.

documentation to support a claim that the shared use of frequency reduced your market size or created financial hardship. The Commission has held that to establish financial hardship, requestors must submit at minimum: a balance sheet and profit and loss statement (audited, if available), a cash flow projection (with an explanation of how calculated), a list of officers and highest paid employees and their individual compensation. *Id.* at 12761-62. You may submit additional information that you believe will document financial hardship. In determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, although deductions for amortization and depreciation, which do not affect cash flow, and payments to principals, reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

You further argue that the fee should be reduced because the methodology used to compute the fee is flawed, mistakenly estimates that WCEV serves more than 2,800,000 people and does not take into account the fact that WCEV has less coverage after dark because of interference. Your arguments as to methodology are more properly comments to the rule making process that resulted in the *Report and Order in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, adopted June 9, 1998. The Commission will not reduce an individual station's regulatory fee on an ad hoc basis based on an argument against the method applied to calculate the regulatory fees for all similarly situated stations. We do note, however, that WCEV is categorized for purposes of assessing regulatory fees as a Class C radio station serving a population estimated as exceeding 1,000,000. Class C radio stations are defined as stations operating on a local channel and designed to render service only over a primary service area that may be reduced as a consequence of interference. 47 C.F.R. § 73.21. Your request to reduce the FY 1998 regulatory fee to \$350 is denied.

If you have any questions concerning this letter, please call the Credit & Debt Management Center at 418-1995.

Sincerely,



Mark Reger  
Chief Financial Officer

9810018835111001

1450 AM

**WCEV**

WE'RE CHICAGOLAND'S  
ETHNIC VOICE®

5356 West Belmont Avenue  
Chicago, Illinois 60641-4192

Chicago 773-282-6700

Fax 773-282-0123

Cicero 708-652-WCEV

**Migala Communications Corporation**

September 14, 1998

Federal Communications Commission  
Regulatory Fees  
P.O. Box 358835  
Pittsburgh, PA 15251-5835

RE: Migala Communications, Inc.  
WCEV 1450AM, Cicero, Illinois  
Second Request for Reduction of Regulatory Fee

Enclosed herewith please find a completed FCC Form 159 and our check for \$1,500.00 (plus \$44.00 for auxiliaries) being submitted as the regulatory fee for WCEV pursuant to the Commission's Public Notice of August 3, 1998.

Although that notice specified that \$1,500.00 was the 1998 regulatory fee for our station, we believe this to be incorrect because WCEV is a share-time station. For the second consecutive year, we are submitting the entire fee and requesting that it be reduced, for 1997, for the current year, and all future years.

As a result of the settlement of a comparative hearing for the initial licensing of the 1450 AM frequency, WCEV shares this frequency in Cicero, Illinois with another station, WVON. Pursuant to the settlement agreement, each licensee utilizes the frequency for approximately half of the broadcast day. The Commission's August 3rd Public Notice, however, indicates that each licensee is responsible for payment of the full \$1,500.00, which would be due from a licensee operating a station on a full-time basis. We are certain it is not the Commission's intention to obtain a regulatory fee for use of this frequency which would be twice the amount paid by licensees of other comparable frequencies. This, of course, would be the case if both WCEV and WVON are required to pay the full \$1,500.00.



Federal Communications Commission

September 14, 1998

Page Two

We believe that a reduction of the fee also would be appropriate on other grounds. In its Notice, the Commission indicated that it is taking into account the audience served by a station in connection with the determination of an appropriate fee. While we can appreciate the desirability of such a feature, the manner in which it has been applied has resulted in an unwarranted increase in the fees to be paid by WCEV from \$280.00 in 1996 to \$1,800.00 in 1997 and the current \$1,500.00.

There is something seriously wrong with the Commission's methodology where a small station, such as WCEV (with 1,000 watts) pays \$1,500 while WMAQ (with 50,000 watts), which is a clear channel station serving many times more people, pays \$4,000.00. The absence of a greater disparity is apparently due to the Commission's methodology, which analyzed population served on the basis of the population within the station's 1 mV/m field strength contour. Although WCEV's 1 mV/m contour covers a substantial portion of the city of Chicago and some of its suburbs, the Commission's own rules recognize that to provide adequate service to an urban area such as Chicago, 5 mV/m service is required. The Commission's methodology, moreover, appears to make no adjustment for the fact that WCEV, like many other small AM stations, has much less coverage after dark because of interference from other stations.

Based on the foregoing, we respectfully request that, in addition to the 50% reduction in fee mandated by the fact that WCEV shares this Cicero frequency with another licensee, the fee should be further reduced to reflect the distortions inherent in the Commission's mistaken estimate that WCEV serves more than 2,800,000 people. Given the foregoing, we believe the most appropriate fee to be assessed for WCEV is \$350.00 representing approximately 125% of the fee paid by the station in 1996, and respectfully request that the station's 1997 and 1998 regulatory fees be reduced to that amount.

Sincerely,



Lucyna Migala

Vice President and Program Director

enclosures

# Payment Transactions Detail Report

DATE: 09/30/98

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Fcc Account Number	Payer TIN	Received Date							
9810018835111001	MIGALA COMMUNICATIONS CORPORAT 5356 WEST BELMONT AVENUE  CHICAGO IL 60641	FCC2009911		09/30/98							
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$1,544.00	\$1,544.00	5	MUB8	1	KB96372	MIGALA COMMUNICATIONS CORPORAT	60641		\$11.00	1	PMT
\$1,544.00	\$1,544.00	4	MUB8	1	KC23741	MIGALA COMMUNICATIONS CORPORAT	60641		\$11.00	1	PMT
\$1,544.00	\$1,544.00	3	MUB8	1	KC23808	MIGALA COMMUNICATIONS CORPORAT	60641		\$11.00	1	PMT
\$1,544.00	\$1,544.00	1	MCF8	1	WCEV1450AM	MIGALA COMMUNICATIONS CORPORAT	60641		\$1,500.00	1	PMT
\$1,544.00	\$1,544.00	2	MUB8	1	WLL256	MIGALA COMMUNICATIONS CORPORAT	60641		\$11.00	1	PMT
<b>Total</b>	<b>5</b>								<b>\$1,544.00</b>		

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554  
AUG 10 1999

46-285

OFFICE OF  
MANAGING DIRECTOR

DOCKET FILE COPY ORIGINAL

Ms. Remelle Sink  
President  
Mountain Valley Media, Inc.  
P.O. Box 607  
Burnsville, N.C. 28714

Re: Request for Reduction and Refund  
of FY 1997 Regulatory Fees  
Radio Station WTOE

Dear Ms. Sink:

This is in response to your request for a partial refund of the Fiscal Year (FY) 1997 regulatory fee for Mountain Valley Media, Inc. as licensee of Radio Station WTOE, Spruce Pine, North Carolina.

WTOE paid an FY 1997 regulatory fee of \$400 based on signal coverage of 104,417 people. WTOE paid an FY 1998 regulatory fee of \$250 based on signal coverage of 16,199 people. You assert that the FY 1998 regulatory fee was based on the correct population and you request a \$150 refund, the difference between the FY 1997 and FY 1998 regulatory fees.

The FY 1997 regulatory fees for all radio stations were derived by calculating the populations within the interference free contour of each individual station. We recognized that some broadcasters believed that the city grade contour which each licensee is required to place over its community of license may be a better reflection of the "core" population served by that station, and in response to complaints from members of the broadcast industry, we calculated FY 1998 radio regulatory fees using each station's city grade contour.

The interference free contour, however, was appropriate for calculating the FY 1997 regulatory fees because that contour represented the area in which listeners received the station's protected signal. Consequently, as a matter of equity, recalculating a station's FY 1997 using the city grade contour for measuring populations and assessing fees, would require recalculating the service areas, populations, and fees, at a minimum, for all radio broadcast stations, in order to insure the Commission's ability to collect the required amount in fees and to treat all licensees equally. Thus, the Commission will not reduce, on an ad hoc basis, an individual station's regulatory fee solely because its population served would be lower had we relied on a different service contour or that because of the

Ms. Remelle Sink

2.

modification of our methodology for computing fees, it paid a lower regulatory fee in FY 1998.

Accordingly, your request for a reduction and partial refund of the FY 1997 regulatory fee for Radio Station WTOE is denied. If you have any questions concerning the regulatory fees, please call the Credit & Debt Management Center at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Reger', is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mark Reger  
Chief Financial Officer



9809218835410004

CBS RAD 

Light & Lively Classic Rock

5,000 Watts

Post Office Box 668 - Spruce Pine, North Carolina 28777

Bus. Office: 704-765-7441

FAX Line: 704-765-7442

828-682-0998

FEES SECTION

SEP 20 8 38 AM '98

RECEIVED

September 22, 1998

Office of the Managing Director  
Federal Communications Commission  
1919 M. Street, N. W., Room 450  
Washington, D. C. 20554

Atten: Regulatory Fee Waiver/Reduction Request

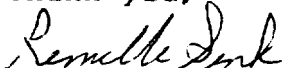
Ref: Radio Station WTOE, Spruce Pine 1997 Regulatory Fees

Dear Sir:

I am requesting a refund of the difference paid by Radio Station WTOE in the regulatory fee paid in 1997 and 1998. In 1997 WTOE paid a \$400 (ck # 3210) regulatory fee based on the population of 104,417. The 1998 fee of \$250 (ck# 3604) was paid on a population of 16,199. The 1998 population is correct for our size market.

Therefore, I request a refund of \$150, the difference between the 1997 fee and the 1998 fee paid. Please make the check to Mountain Valley Media, Inc. (WTOE), P. O. Box 607, Burnsville, N. C. 28714.

Thank you,



Remelle Sink  
President



## Payment Search Detail



Fee Control Number	Payor Name	Remittance ID	Payment Amount
9707318180415011	WTOE	3155	\$45.00
9709198835499012	MOUNTAIN VALLEY MEDIA INC	3210	\$425.00

Credit Card Info

Payor Info

Bad Check Info

Changer Info

Acct Info

Sequence	Quantity	Payment Type Code	Payment Amount	Trans Code	Call Sign Other Id	Treasury Symbol	Date Last Changed	Changer Initials
2	1	MUB7	\$25.00	PMT	KEH232	27X6725	9/22/97	LBJ
1	1	MGI7	\$400.00	PMT	WTOEAM	27X6725	9/22/97	LBJ

Move to Unapplied

FCC Code Info

Applicant Info

Treasury Info

Modify Payment

Close

Print Screen



9:16 AM

# Payment Transactions Detail Report

Date: 11/5/98

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9809218835410004	MOUNTAIN VALLEY MEDIA INC POST OFFICE BOX 607  BURNSVILLE NC 28714	FCC2062595	09/18/98

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$261.00	\$261.00	2	MUB8	1	KEH232	MOUNTAIN VALLEY MEDIA INC	28714		\$11.00	1	PMT
\$261.00	\$261.00	1	MDA8	1	WTOEAM	MOUNTAIN VALLEY MEDIA INC	28714		\$250.00	1	PMT
<b>Total</b>	<b>2</b>								<b>\$261.00</b>		